

EXHIBIT 12

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

* * * * *

2425 WL, LLC	*	CIVIL NO. 4:24-CV-2590
	*	Houston, Texas
Vs.	*	
	*	3:27 p.m. - 3:44 p.m.
NATIONAL BANK OF KUWAIT,	*	
S.A.K.P., NEW YORK BRANCH	*	November 21, 2024

* * * * *

TELEPHONIC MOTION HEARING

BEFORE THE HONORABLE JUDGE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

* * * * *

Proceedings recorded by computer stenography
Produced by computer-aided transcription

EDWARD L. REED
EdReedCR@aol.com
409-330-1605

1 **APPEARANCES:**

2 For the Plaintiff:

3 MR. JOSEPH CARL CECERE
4 **Cecere, PC**
5 6035 McCommas Boulevard
6 Dallas, TX 75206

7 MR. H. GRAY BURKS, IV
8 **Attorney at Law**
9 9601 Katy Freeway, Suite 450
10 Houston, TX 77024

11 For the Defendant:

12 MR. ANDREW M. TROOP
13 MR. CHARLES C. CONRAD
14 **Pillsbury Winthrop Shaw Pittman, LLP**
15 31 West 52nd Street
16 New York, NY 10019

17 For the U.S. Trustee:

18 MR. R.J. SHANNON
19 **Shannon & Lee, LLP**
20 2100 Travis
21 Suite 1525
22 Houston, TX 77002

23 Case Manager:

24 ART RIVERA

25 Court Reporter:

EDWARD L. REED

EDWARD L. REED
EdReedCR@aol.com
409-330-1605

P R O C E E D I N G S

3:27 P.M. - NOVEMBER 21, 2024

CASE MANAGER: Any parties on the line?

MR. SHANNON: This is R.J. Shannon on behalf of the Trustee. We're not a movant, but we are a related party in the case.

THE COURT: Okay, Keith Ellison here.

MR. TROOP: Your Honor, I'm Andrew Troop for the National Bank of Kuwait.

THE COURT: Welcome.

MR. TROOP: Thank you, Your Honor.

MR. SHANNON: R.J. Shannon for the Trustee's Office.

THE COURT: Okay, sorry to interrupt. Go ahead.

MR. CECERE: This is Joseph Carl Cecere for 2425 WL, LLC.

THE COURT: Anybody else expected?

MR. TROOP: This is Andrew Troop again. My partner, Charles Conrad, is in the room.

THE COURT: Okay. Anybody else?

MR. CECERE: Your Honor, Gray Burks, who is a substituted out counsel, but he filed a designation, is going to be available, but I don't think he's joined yet.

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EdReedCR@aol.com

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1 THE COURT: We'll wait for him.

2 **[Pause]**

3 Mr. Burks doesn't have anything to say
4 about the disqualification issue, does he?

5 MR. CECERE: No, Your Honor, he does not.

6 THE COURT: Okay, then why don't we start on
7 that issue and then he can join us later.

8 I really don't -- I just got these two
9 letters, one from each side, about disqualification.
10 If this is an issue, why wasn't a Motion to Disqualify
11 filed in this cases?

12 MR. CECERE: Your Honor, we're planning on
13 filing a Motion to Disqualify. We have been busy. The
14 bank filed an action to evict one of my clients and
15 we've been consumed with that and other things, so we
16 just haven't gotten it on file yet. But we do plan on
17 filing a motion for disqualification. We did think,
18 however, given that the bank is going to go back to the
19 Justice of the Peace Court to get clarification on the
20 order, we thought it would be appropriate to wait until
21 that clarification was received because, by its terms,
22 the order does seem to extend the [?] and raise
23 substantial questions as to whether the --

24 THE COURT: Secure?

25 MR. TROOP: Yes, thank you, Your Honor. The

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EdReedCR@aol.com

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1 parties to this appeal are not the parties to this
2 clarification order that was entered by the J.P. Court.
3 I would also note, the ability to disqualify someone in
4 federal court requires that a federal court adjudicate
5 that issue and not rely on a state court judge.

6 And thirdly, Your Honor, that
7 disqualification order was entered three weeks ago.

8 THE COURT: I'm having trouble hearing you.

9 MR. TROOP: I'm sorry, that qualification
10 order was entered three weeks ago.

11 THE COURT: That's what I noticed.

12 MR. TROOP: Yes. Mr. Cecere was not involved
13 in the eviction proceedings. It does not relate to
14 his client, 2425 WL, which is the appellant in this
15 case. It's a different entity that is represented by
16 different parties, and there is no excuse here for what
17 they intend to do.

18 And finally, Your Honor, I don't know on
19 what factual basis anyone would assert that Pillsbury
20 was a co-counsel in the J.P. action. We did not appear
21 in that case and was not identified as co-counsel.

22 And I will say, clearly, Your Honor, I was
23 in the courtroom on the day that the disqualification
24 motion with respect to Jackson Walker was argued. And
25 the underlying motion, I represent to you, was only

EDWARD L. REED

EdReedCR@aol.com

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1 against Jackson Walker. There was no mention of
2 Pillsbury at the hearing, there was no request made
3 with respect to Pillsbury at the hearing, and the order
4 which was submitted after the hearing is different
5 from the relief that was requested in the order. And
6 Pillsbury never got served with anything, understanding
7 we weren't counsel in the case.

8 So, Your Honor, I don't think there is any
9 reason for you to delay this.

10 I'm sorry, Your Honor, one final thing.
11 The issues in this appeal do not relate to the issue
12 of whether or not [someone] who is not a party to this
13 appeal can be dispossessed from the property which was
14 sold pursuant to a bankruptcy court order, which has
15 not been appealed, and the property was sold free and
16 clear of all liens, incumbrances, and other interests
17 in the property. So, whatever issue we have here on
18 appeal by the appellant are divorced from that eviction
19 proceeding in every respect and should not delay the
20 appeal.

21 THE COURT: This is Keith Ellison speaking.
22 I'm going to rule the issue of disqualification has
23 been waived for purposes of this hearing because of
24 this three-week delay in getting the papers to me. I
25 can't possibly look into this question fully and fairly

EDWARD L. REED

EdReedCR@aol.com

409-330-1605

1 on this short notice, so I'm going to consider the
2 issue of disqualification waived for lack of notice.

3 Now we'll move to the Motion to Dismiss
4 the appeal. I have the papers, I've read the papers.
5 Does the Appellee have anything it wishes to say in
6 addition to what's in the papers?

7 MR. TROOP: Your Honor, the way you phrased
8 the question, I would add to the papers only two things
9 that I don't think that we've responded to what has
10 been filed by the Appellant.

11 The first argument responded to by the
12 Appellant is an argument we've made in this most recent
13 filing that because there are still subsequent events
14 occurring that we contend undercuts Appellant's
15 argument, that they shouldn't proceed with the appeal
16 because of the intention of the award was to get an
17 answer in time for secondary filing for the designation
18 of that as an issue. And the standing issue
19 demonstrates that the Motion to Dismiss is premature.

20 I think for that, Your Honor, I would
21 respond with, no, that's exactly what it's all about.
22 The fact is that there are subsequent things happening.
23 Whatever metaphor they use, it just makes it stronger,
24 Your Honor, it doesn't make it --

25 THE COURT: Okay, I understand that point. Is

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EdReedCR@aol.com

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1 that it?

2 MR. TROOP: Your Honor, let me just make sure
3 as I'm looking through my notes, if you'll just give me
4 30 seconds.

5 THE COURT: I thought your papers were
6 complete. You don't have to feel the need to say
7 anything more.

8 MR. TROOP: Your Honor, thank you.

9 THE COURT: Okay, for the Appellant.

10 MR. CECERE: Your Honor, thank you. I want to
11 go through a few things mainly that are raised in their
12 reply brief just to make sure that they are clear.
13 And I'll try and be as brief as possible.

14 On standing, we cited numerous cases in
15 which parties had standing to challenge release or
16 exculpation provisions without being creditor. We
17 think those stand for the proposition that whether or
18 not we have a good -- you know, whether or not our
19 claim is disallowed, that we can proceed with the
20 appeal and we have standing to appeal because we have
21 two independent grounds for standing.

22 Now, the bank says that we failed to
23 timely appeal the order disallowing our claims in the
24 Bankruptcy Court. That is maybe one of the issues on
25 appeal, but is not correct. You can see the appeal is

EDWARD L. REED

EdReedCR@aol.com

409-330-1605

1 now docketed in your court, 4:24-cv-03834, and we've
2 explained in Docket Entry 1-1 on page 3 how our appeal
3 is timely, and the Bankruptcy Court just mistook the
4 deadline, mistook when the order was entered and when
5 our motion was actually filed. So we don't think that
6 it's an untimely appeal. And again, that's an issue
7 that's kind of got to be resolved through the appellate
8 process here before we know whether or not our claim
9 really is or should be disallowed.

10 And I would make one other case about the
11 idea -- or make one more point about standing and our
12 ability to challenge the gatekeeping order. That is
13 simply something that is not -- I'm sorry, I'm just
14 reviewing the rest of my notes. I have challenges to
15 the gatekeeping order and I have challenges to the
16 injunction and the exculpation provisions. We haven't
17 given up on any of those arguments. We haven't given
18 up on our claim that -- or how our claim is treated.
19 We're keying on those things. But what we're saying
20 here is we need a release of those independently and
21 see if there is a certain kind of relief that can be
22 awarded on each of those claims independently and even
23 if like reclassifying creditors would require
24 unscrambling the egg, as the bank says. We
25 respectfully submit that several of them do not.

EDWARD L. REED

EdReedCR@aol.com

409-330-1605

1 The question, for example, is whether or
2 not the relief or exculpation, the gatekeeping
3 provisions, can be taken out of the plan without
4 getting rid of it. One of the things is time. You
5 know, recently we have the *Highland Capital* case, we
6 have the [?] case, in which relief provisions were
7 deemed invalid and there was challenges to equitable
8 [?] there in the bank, and the plan's opponents in
9 those cases said the same thing they're saying here,
10 which is, oh, that [?] entire bargain of the plan. But
11 they were not being [?] because those releases could at
12 least be taken out of the plan and consequences of that
13 could be determined on remand for whether or not the
14 person wants to walk away from the bargain or would
15 want to proceed along the way.

16 And in that case and in that sense, this
17 is just a dispute between us and the bank, or at least
18 in the event the Trustee would be challenging the
19 exculpation of the Trustee. Those are the claims that
20 are here. Those don't involve anybody else, like
21 anywhere else.

22 THE COURT: Thank you.

23 MR. CECERE: May I address one more thing?

24 You know, in addition to what we said in
25 our papers, I did want to make one thing clear about

EDWARD L. REED

EdReedCR@aol.com

409-330-1605

1 Mr. Burks' reasons for [?] and then trying to pass that
2 as being somehow kind of improper or strategious. The
3 real question was the bank, in its papers, their plan
4 didn't go into effect until it was determined whether
5 they were going to be the winning bidder or not. So
6 we didn't know until they won the auction or realize
7 that other entities did not win the auction. Only at
8 that point did we know which plan was going to be
9 applicable, what plan provisions were going to be
10 subject to. It was at that point that Mr. Burks
11 decided he wanted to wait until that happened to make
12 sure he understood the issues that were going to be
13 going on in that field.

14 And as I mentioned, I did have Mr. Burks
15 come today in case you wanted to talk about that
16 directly with him.

17 THE COURT: No, that's not necessary.

18 MR. BURKS: Yes, Your Honor.

19 THE COURT: I made my living as a bankruptcy
20 lawyer before I took this job and that's where my board
21 certification is in, and I think this case points to
22 one of the ugliest aspects of bankruptcy procedure,
23 and that is the mootness doctrine. But I do believe,
24 having refreshed myself on the Fifth Circuit
25 jurisprudence on mootness, I do believe this case is

EDWARD L. REED

EdReedCR@aol.com

409-330-1605

1 moot and the appeal cannot proceed. The bank has
2 already paid many creditors, including tax lien
3 creditors, and any chance of getting money back from
4 them is, I can guarantee, fruitless. The case is too
5 far along to be unwound. There is no attempt to stay
6 the effectiveness of the order, no appeals on that
7 denial of stay. It's moot under Fifth Circuit law.

8 And I regret that because I think it is
9 an untoward aspect of bankruptcy jurisprudence. I was
10 an appellant lawyer many times in my career, but the law
11 is unambiguous and my ruling is this case is dismissed.

12 Thank you very much.

13 MR. CECERE: Thank you, Your Honor.

14 MR. TROOP: Thank you, Your Honor.

15 **[3:44 p.m. - Proceedings adjourned]**

16

17 REPORTER'S CERTIFICATE

18

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled
21 cause.

22

23 /s/ Ed Reed
24 Edward L. Reed
25 Court Reporter

1-6-25
Date

EDWARD L. REED
EdReedCR@aol.com
409-330-1605